

SAM BENEVENTO, Esq.
Nevada Bar No. 003676
ROBERTSON & BENEVENTO
1945 East Warm Springs
Las Vegas, NV 89119
Phone: (702) 433-2000
Email: generaldelivery@nevlawyers.com
Attorney for Debtor(s)

E-FILED: 3/18/2009

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In Re:) **Case No. BKS-09-10881 BAM**
JOHN C. BORIS) **Chapter 13**
)
) **Hearing Date: April 23, 2009**
) **Hearing Time: 3:30 pm**
Debtor(s).)
)
)
)
)

**MOTION TO VALUE COLLATERAL, "STRIP OFF" AND MODIFY RIGHTS OF
M&I MARSHALL & ILSLEY BANK PURSUANT TO 11 U.S.C. §506(a) AND §1322**

Debtor, John Boris, by and through attorney Sam Benevento hereby moves this Court for its Order valuing collateral and modifying the rights of Creditor M&I Marshall & Ilsley Bank ("M&I") pursuant to 11 U.S.C. §506(a), and §1322, and Bankruptcy Rules 3012 and 9014. In furtherance of this motion, Debtors state as follows:

1. Debtor filed the above captioned Chapter 13, Case Number 09-10881 BAM on January 23, 2009.
2. On the petition date, Debtor owned real property located at 911 Wild West Drive, Henderson, NV 89002, legally described as:
Black Mountain Ranch-Unit 1, Plat Book 63, Page 93, Lot 5, Block 4
APN 179-33-111-036,
(hereinafter the "Property").

3. The value of the Property was \$265,000.00 as of the petition date. See appraisal attached hereto as Exhibit "1".
4. As of the petition date, the Property was encumbered by a First Trust Deed in favor of Wells Fargo Home Mortgage securing a note with a principal balance of \$375,531.00.
5. As of the petition date, no equity existed in the Property above the claim of Wells Fargo Home Mortgage with respect to the First Trust Deed.
6. M&I holds a Second Trust Deed securing a note with a principal balance of \$60,580.52. This Second Trust Deed was wholly unsecured on the petition date and if the Property were to be sold at auction, M&I would receive nothing with respect to the Second Trust Deed. This Second Trust Deed was recorded in the Office of the Clark County Recorder as instrument 20071030-03760 on October 30, 2007.
7. The Debtor therefore takes the position that M&I's note secured by Second Trust Deed is unsecured and should be reclassified as a general unsecured claim to receive pro rata with other general unsecured creditors through the Debtor's Chapter 13 Plan.

LEGAL ARGUMENT

In *In re Zimmer*, 313 F.3d 1220 (9th Cir. 2002), the Court stated that a wholly unsecured lien holder's claim can be modified and reclassified as a general unsecured claim pursuant to 11 U.S.C. §506(a), despite the anti-modification language in §1322(b)(2). Specifically, the Court held:

Section 506(a) divides creditors' claims into "secured...claims" and "unsecured claims." Although the conventional interpretation of "secured" might include any claim in which the creditor has a security interest in the debtor's property, § 506(a) makes clear that the status of a claim depends on the valuation of the property. An allowed claim of a creditor secured by a lien on property in which the estate has an interest ... is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property ... and is an unsecured claim to the extent that the value of such creditor's interest ... is less than the amount of such allowed claim

...

To put it more simply, a claim such as a mortgage is not a "secured claim" to the extent that it exceeds the value of the property that secures it. Under the Bankruptcy Code, "secured claim" is thus a term of art; not every claim that is secured by a lien on property will be considered a "secured claim." Here, it is plain that PSB Lending's claim for the repayment of its loan is an unsecured claim, because its deed of trust is junior to the first deed of trust, and the value of the loan secured by the first deed of trust is greater than the value of the house.

Since M&I's Second Trust Deed is wholly unsecured (in that there is no equity above the first mortgage in the Property), this Court should reclassify M&I's second mortgage claim to a general unsecured claim to be receive pro rata with like unsecured creditors. M&I should also be stripped of its secured rights under State law and the recorded Second Trust Deed should be expunged from the county records to give effect to this Court's order.

Moreover, Debtor may bring a motion to "strip off" M&I's Second Trust Deed and is not required to file an adversary proceeding. *See In re Williams*, 166 B.R. 615 (Bankr.E.D.Va.1994), *In re Fuller*, 255 B.R. 300 (Bankr.W.D.Mich.2000), *In re Hoskins*, 262 B.R. 693 (Bankr.E.D.Mich.2001), *In re King*, 290 B.R. 641 (Bankr.C.D.Ill.2003), *In re Millspaugh*, 302 B.R. 90 (Bankr.D.Idaho 2003), *Dickey v. Ben. Fin. (In re Dickey)* 293 B.R. 360 (Bankr.M.D.Pa.2003), *In re Hill*, 304 B.R. 800 (Bankr.S.D.Ohio 2003); *In re Sadala* 294 B.R. 180 (Bankr.M.D.Fla.2003), *In re Fisher*, 289 B.R. 544 (Bankr.W.D.N.Y.2003), *In re Robert*, 313 B.R. 545 (Bankr.N.D.N.Y.2004), *In re Bennett*, 312 B.R. 843 (Bankr.W.D.Ky.2004).

WHEREFORE, Debtor prays that this Court:

1. Find that M&I is not a holder of a lien on the Property with respect to the Second Trust Deed.

1 2. Immediately avoid, "Strip off", extinguish and expunge from the County Recorder
2 M&I's wholly unsecured Second Trust Deed from the Property pursuant to 11 U.S.C. Section
3 506(a);

4 3. Reclassify M&I's claim as a general unsecured claim to be paid pro rata with
5 other general unsecured creditors through the Debtor's chapter 13 plan;

6 4. Such other relief the Court finds appropriate.

7 Dated: March 18, 2009

8
9 /s/ Sam Benevento, Esq.

10 Sam Benevento, Esq.

11 Attorney for Debtor(s)

ROBERTSON & BENEVENTO

1945 East Warm Springs Road

Las Vegas, Nevada 89119

Tel: (702) 433-2000 Fax: (702) 269-8139

APPRAISAL OF REAL PROPERTY

LOCATED AT:

911 Wild West Dr
Black Mountain Ranch-Unit 1 Plat Book 63 Page 93 Lot 5 Block 4
Henderson, NV 89002-9424

FOR:

Boris, John C
911 Wild West Dr, Henderson NV 89002

AS OF:

01/24/2009

BY:

Steven D Protheroe

Uniform Residential Appraisal Report

944 Wagon Train Dr
File # 0082448

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.																																																																																																											
Property Address	911 Wild West Dr	City	Henderson	State	NV	Zip Code	89002-9424																																																																																																				
Borrower	N/A	Owner of Public Record	Boris, John C	County	Clark																																																																																																						
Legal Description	Black Mountain Ranch-Unit 1 Plat Book 63 Page 93 Lot 5 Block 4																																																																																																										
Assessor's Parcel #	179-33-111-036	Tax Year	2008	R.E. Taxes \$	2,707.95																																																																																																						
Neighborhood Name	Black Mountain Ranch	Map Reference	MM 88-E5	Census Tract	0053.45																																																																																																						
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Lender/Client	Boris, John C	Address	911 Wild West Dr, Henderson NV 89002																																																																																																								
Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																																																																																																											
Report data source(s) used, offering price(s), and date(s). The subject has not been listed on the MLS in the past 12 months.																																																																																																											
I <input type="checkbox"/> did <input type="checkbox"/> did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed.																																																																																																											
Contract Price \$ N/A Date of Contract N/A Is the property seller the owner of public record? <input type="checkbox"/> Yes <input type="checkbox"/> No Data Source(s)																																																																																																											
Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? <input type="checkbox"/> Yes <input type="checkbox"/> No																																																																																																											
If Yes, report the total dollar amount and describe the items to be paid.																																																																																																											
Note: Race and the racial composition of the neighborhood are not appraisal factors.																																																																																																											
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Market Conditions (including support for the above conclusions) Subject's market area activity/values are declining at this time. Prices appear to be softening due to over supply. Units typically sell within 1-160 day time frame if competitively priced and marketed properly. Conventional, government financing is tightening causing a smaller pool of qualified buyers. Lone discounts, interest buydowns, and concessions are typical.																																																																																																											
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Are the utilities and off-site improvements typical for the market area? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, describe																																																																																																											
Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, describe																																																																																																											
There are no apparent adverse conditions, however this is an extraordinary assumption as my inspection was made without the benefit of a title report or survey. See preliminary title report.																																																																																																											
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Finished area above grade contains: 6 Rooms 4 Bedrooms 2.50 Bath(s) 2,426 Square Feet of Gross Living Area Above Grade																																																																																																											
Additional features (special energy efficient items, etc.). See additional comments.																																																																																																											
Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.). The subject is considered to be of average quality construction, in overall good condition. No external or functional inadequacies observed at time of inspection. Physical depreciation calculated using the age/life method. Roof cover appears to be in good condition. Floor plan is adequate.																																																																																																											
Are there any physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, describe																																																																																																											
Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, describe																																																																																																											

Uniform Residential Appraisal Report

944 Wagon Train Dr
File # 0082448

There are 5 comparable properties currently offered for sale in the subject neighborhood ranging in price from \$ 249,000 to \$ 269,500	
There are 7 comparable sales in the subject neighborhood within the past twelve months ranging in sale price from \$ 210,000 to \$ 287,000	
FEATURE	SUBJECT
Address	911 Wild West Dr Henderson, NV 89002-9424
Proximity to Subject	75 Rattlesnake Grass Ct Henderson
Sale Price	\$ N/A
Sale Price/Gross Liv. Area	\$ 122.34 sq.ft.
Data Source(s)	Taxstar & MLS # 882954
Verification Source(s)	APN # 179-31-117-065
VALUE ADJUSTMENTS	DESCRIPTION DESCRIPTION +(-) \$ Adjustment
Sales or Financing	VA
Concessions	Dom 13
Date of Sale/Time	01/22/2009
Location	Suburban
Leasehold/Fee Simple	Fee Simple
Site	10,107 Sq. Ft.
View	Neighborhood
Design (Style)	1 Story
Quality of Construction	Stucco / Conc
Actual Age	14 Years
Condition	Average
Above Grade	Total Bdrms. Baths
Room Count	6 4 2.50
Gross Living Area	2,426 sq.ft.
Basement & Finished	0
Rooms Below Grade	0
Functional Utility	Average
Heating/Cooling	FWA / CAC
Energy Efficient Items	None Noted
Garage/Carport	Garage 3
Porch/Patio/Deck	Cov Patio
Fireplace	Fireplace 1
Upgrades / Landscaping	Avg / Avg
Pool / Spa	No Pool/No Spa
Net Adjustment (Total)	\$ 6,200
Adjusted Sale Price of Comparables	\$ 293,200
I <input checked="" type="checkbox"/> did <input type="checkbox"/> did not research the sale or transfer history of the subject property and comparable sales. If not, explain	
My research <input checked="" type="checkbox"/> did <input type="checkbox"/> did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.	
Data Source(s) Clark County Assessor / MLS	
My research <input checked="" type="checkbox"/> did <input type="checkbox"/> did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.	
Data Source(s) Clark County Assessor / MLS	
Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).	
ITEM	SUBJECT
Date of Prior Sale/Transfer	02/07/2006
Price of Prior Sale/Transfer	\$485,000
Data Source(s)	Clark County Assessor,MLS
Effective Date of Data Source(s)	01/24/2009
Analysis of prior sale or transfer history of the subject property and comparable sales The subject and comparable sales have not been sold within the last 3 years except as given in the grid of the sales comparison approach.	
Summary of Sales Comparison Approach The subject's design, size, age, and maintenance level is compatible with the neighborhood. The closed sales displayed in the analysis were considered to be the most comparable to the subject and the best indicators of value for the subject. They are all considered reasonable purchase alternatives. A reasonable alternative reflects the economic principle of "substitution" whereby a well informed or well advised purchaser will pay no more for a property than the cost of acquiring an equally desirable substitute. Dollar adjustments are an estimate reflecting the market's reaction to the difference in the properties, not necessarily the cost of the difference. A "none noted" amenity entry indicates that the appraiser could not ascertain the existence or non-existence of that amenity and accordingly no adjustments were made. Sites typical in size and utility were not adjusted for their square foot differences. In estimating market value each comparable was given equal consideration after market recognized adjustments were made.	
Indicated Value by Sales Comparison Approach \$ 265,000	
Indicated Value by: Sales Comparison Approach \$ 265,000 Cost Approach (if developed) \$ N/A Income Approach (if developed) \$ N/A	
Greatest consideration on Sales Comparison Analysis as the action of buyers and sellers are reflected therein. The Cost Analysis is not applicable with the exception of FHA financing of homes new to 12 months old. When provided, it is per lender request or information only.	
This appraisal is made <input checked="" type="checkbox"/> "as is", <input type="checkbox"/> subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, <input type="checkbox"/> subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or <input type="checkbox"/> subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair: This appraisal is made "As is" and is 100% complete. No personal property is included in the final value estimate.	
Based on a complete visual inspection of the interior and exterior areas of the subject property, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is \$ 265,000 ,as of 01/24/2009 , which is the date of inspection and the effective date of this appraisal.	

Uniform Residential Appraisal Report

944 Wagon Train Dr
File # 0082448

See attached addenda.

ADDITIONAL COMMENTS

COST APPROACH TO VALUE (not required by Fannie Mae)

Provide adequate information for the lender/client to replicate the below cost figures and calculations.

Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value) The cost approach was not completed.

COST APPROACH

ESTIMATED <input type="checkbox"/> REPRODUCTION OR <input type="checkbox"/> REPLACEMENT COST NEW	OPINION OF SITE VALUE	= \$
Source of cost data	DWELLING Sq.Ft. @ \$	= \$
Quality rating from cost service Effective date of cost data	Sq.Ft. @ \$	= \$
Comments on Cost Approach (gross living area calculations, depreciation, etc.)		= \$
	Garage/Carport Sq.Ft. @ \$	= \$
	Total Estimate of Cost-New	= \$
	Less Physical Functional External	
	Depreciation	= \$()
	Depreciated Cost of Improvements	= \$
	"As-is" Value of Site Improvements	= \$
Estimated Remaining Economic Life (HUD and VA only) 63 Years	INDICATED VALUE BY COST APPROACH	= \$

INCOME

INCOME APPROACH TO VALUE (not required by Fannie Mae)

Estimated Monthly Market Rent \$ N/A X Gross Rent Multiplier N/A = \$ N/A Indicated Value by Income Approach

Summary of Income Approach (including support for market rent and GRM) Income approach was considered, but due to lack of data was not given any weight.

PUD INFORMATION

PROJECT INFORMATION FOR PUDs (if applicable)

Is the developer/builder in control of the Homeowners' Association (HOA)? ☐ Yes ☒ No Unit type(s) ☒ Detached ☐ Attached

Provide the following information for PUDs ONLY if the developer/builder is in control of the HOA and the subject property is an attached dwelling unit.

Legal Name of Project

Total number of phases	Total number of units	Total number of units sold
Total number of units rented	Total number of units for sale	Data source(s)

Was the project created by the conversion of existing building(s) into a PUD? ☐ Yes ☐ No If Yes, date of conversion.

Does the project contain any multi-dwelling units? ☐ Yes ☐ No Data Source

Are the units, common elements, and recreation facilities complete? ☐ Yes ☐ No If No, describe the status of completion.

Are the common elements leased to or by the Homeowners' Association? ☐ Yes ☐ No If Yes, describe the rental terms and options.

Describe common elements and recreational facilities.

Uniform Residential Appraisal Report944 Wagon Train Dr
File # 0082448

This report form is designed to report an appraisal of a one-unit property or a one-unit property with an accessory unit; including a unit in a planned unit development (PUD). This report form is not designed to report an appraisal of a manufactured home or a unit in a condominium or cooperative project.

This appraisal report is subject to the following scope of work, intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications. Modifications, additions, or deletions to the intended use, intended user, definition of market value, or assumptions and limiting conditions are not permitted. The appraiser may expand the scope of work to include any additional research or analysis necessary based on the complexity of this appraisal assignment. Modifications or deletions to the certifications are also not permitted. However, additional certifications that do not constitute material alterations to this appraisal report, such as those required by law or those related to the appraiser's continuing education or membership in an appraisal organization, are permitted.

SCOPE OF WORK: The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a complete visual inspection of the interior and exterior areas of the subject property, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

INTENDED USE: The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

INTENDED USER: The intended user of this appraisal report is the lender/client.

DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale.

*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS: The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.
2. The appraiser has provided a sketch in this appraisal report to show the approximate dimensions of the improvements. The sketch is included only to assist the reader in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.
5. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing the appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.
6. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that the completion, repairs, or alterations of the subject property will be performed in a professional manner.

Uniform Residential Appraisal Report

944 Wagon Train Dr
File # 0082448**APPRAISER'S CERTIFICATION:** The Appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.
2. I performed a complete visual inspection of the interior and exterior areas of the subject property. I reported the condition of the improvements in factual, specific terms. I identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.
3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.
5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.
6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.
7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.
8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.
9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.
10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.
11. I have knowledge and experience in appraising this type of property in this market area.
12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.
13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.
14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.
15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.
16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.
17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.
18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).
19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.
20. I identified the lender/client in this appraisal report who is the individual, organization, or agent for the organization that ordered and will receive this appraisal report.

Uniform Residential Appraisal Report

944 Wagon Train Dr
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21. The lender/client may disclose or distribute this appraisal report to: the borrower; another lender at the request of the borrower; the mortgagee or its successors and assigns; mortgage insurers; government sponsored enterprises; other secondary market participants; data collection or reporting services; professional appraisal organizations; any department, agency, or instrumentality of the United States; and any state, the District of Columbia, or other jurisdictions; without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media).

22. I am aware that any disclosure or distribution of this appraisal report by me or the lender/client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by me.

23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.

24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws.

SUPERVISORY APPRAISER'S CERTIFICATION: The Supervisory Appraiser certifies and agrees that:

1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.
3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.
4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.
5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

APPRAISER Steven D Protheroe

Signature Steven D Protheroe
 Name Steven D Protheroe
 Company Name Desert Appraisals, LLC
 Company Address 6295 Mcleod Drive, Suite 18, Las Vegas, NV
89120
 Telephone Number (702) 730-2989
 Email Address steve@desertappraisalsnv.com
 Date of Signature and Report January 29, 2009
 Effective Date of Appraisal 01/24/2009
 State Certification # _____
 or State License # A.0004621-RES
 or Other (describe) _____ State # _____
 State NV
 Expiration Date of Certification or License 4/30/2009

ADDRESS OF PROPERTY APPRAISED

911 Wild West Dr
Henderson, NV 89002-9424

APPRAISED VALUE OF SUBJECT PROPERTY \$ 265,000

LENDER/CLIENT

Name _____
 Company Name Boris, John C
 Company Address 911 Wild West Dr, Henderson NV 89002
 Email Address _____

SUPERVISORY APPRAISER (ONLY IF REQUIRED)

Signature _____
 Name _____
 Company Name _____
 Company Address _____
 Telephone Number _____
 Email Address _____
 Date of Signature _____
 State Certification # _____
 or State License # _____
 State _____
 Expiration Date of Certification or License _____

SUBJECT PROPERTY

- ☐ Did not inspect subject property
☐ Did inspect exterior of subject property from street
 Date of Inspection _____
☐ Did inspect interior and exterior of subject property
 Date of Inspection _____

COMPARABLE SALES

- ☐ Did not inspect exterior of comparable sales from street
☐ Did inspect exterior of comparable sales from street
 Date of Inspection _____

Supplemental Addendum

File No. 0082448

Borrower/Client	N/A			
Property Address	911 Wild West Dr			
City	Henderson	County	Clark	State NV Zip Code 89002-9424
Lender	Boris, John C			

• URAR : Additional Comments

Additional Features: The subject features rear fenced yard, front and rear landscaping, covered patio, tile entry, hallway, laundry room, family room, kitchen, nook, wood laminate flooring at 2 bedrooms, wood at living room, dining area, master bedroom, tile counters in kitchen and bathrooms, thermo foil cabinets in kitchen and bathrooms, dual sinks with separate tub and shower, ceiling fans, alarm system, finished garage walls, etc..

Upgrade Adjustments:

Comparable #1 was not adjusted due to it's similar interior upgrades.
 Comparable #2 was not adjusted due to it's similar interior upgrades.
 Comparable #3 was adjusted to reflect it's superior interior upgrades (upgraded tile work in bathroom).
 Comparable #4 was adjusted to reflect it's inferior interior upgrades (less upgraded flooring).
 Comparable listing #5 was adjusted to reflect it's inferior interior upgrades (less upgraded flooring).
 Comparable listing #6 was not adjusted due to it's similar interior upgrades.

OVER 1 MILE DISTANT

Research was expanded in excess of one mile from the subject property for comparable sales #1, #2, #3 however, the sales were considered to be a reliable indicator of value for the subject property, as they are recent sales of similar dwellings with similar gross building area, age, condition and located in a similar neighborhood. Due to the declining value market conditions in the Las Vegas Valley there are limited recent, similar sales comparables available.

The appraiser is aware of the estimated market value being greater than that of the estimated predominant neighborhood value however, there are homes within the subject's market area which exceed the subject in value. It is in the opinion of the appraiser that the subject is not an over improvement for it's neighborhood.

ELECTRONIC SIGNATURE:

The electronic signature, which has been securely affixed to this report, carries the same level of authenticity as a traditional signature.

This appraisal report is not a home inspection, the appraiser only performed a visual inspection of accessible areas and that the appraisal cannot be relied upon to disclose conditions and/or defects in the property. In addition, simply because a borrower or third party may receive a copy of the appraisal, it does not mean that the borrower or third party is an intended user as that term is defined in the URAR form.

"Greater Las Vegas Association of Realtors Reports"

Statistics released by the Greater Las Vegas Association of Realtors reported 2,498 single-family home sales in December, up 184.2 percent from 879 in December 2007, though median prices declined 32.7 percent. The number of homes available for sale remained relatively stable, up 0.6 percent from a year ago at 22,144 units. GLVAR sold 455 condos in December, up 172.5 percent from 167 a year ago. Median home prices dropped to \$175,000 in December, the lowest level since 2003. Condo prices are down 51.4 percent from a year ago at \$89,900. Bank-owned properties, or foreclosures, accounted for 41 percent of all listings in December and slightly more than 75 percent of all closings, Frank Nason of Residential Resources reported. Short-sale properties, offered at less than the mortgage owed, accounted for 31 percent of listings and 11 percent of closings. The percentage of vacant listings continues to increase, Nason said. He found 65.2 percent of single-family listings vacant in December, compared with 44 percent in the beginning of 2007. Condo vacancies rose to 74 percent from 57 percent during the same period. According to the GLVAR, two out of every three homes for sale in Southern Nevada are bank-owned.

Comparable sales #2, #4 were bank owned properties. Listings are provided for informational purposes only.

It is unavoidable to not use bank owned properties or short sale properties due to the declining value market conditions in the Las Vegas Valley.

Most weight is placed with comparable sales #1 and #3 with the consideration of the comparable listings provided.

The appraiser is aware of the value stated below the comparable listings provided however they are non bank or non distress listings with excessive days on market and don't appear to be priced competitively compared to the comparable sales in the subject market area.

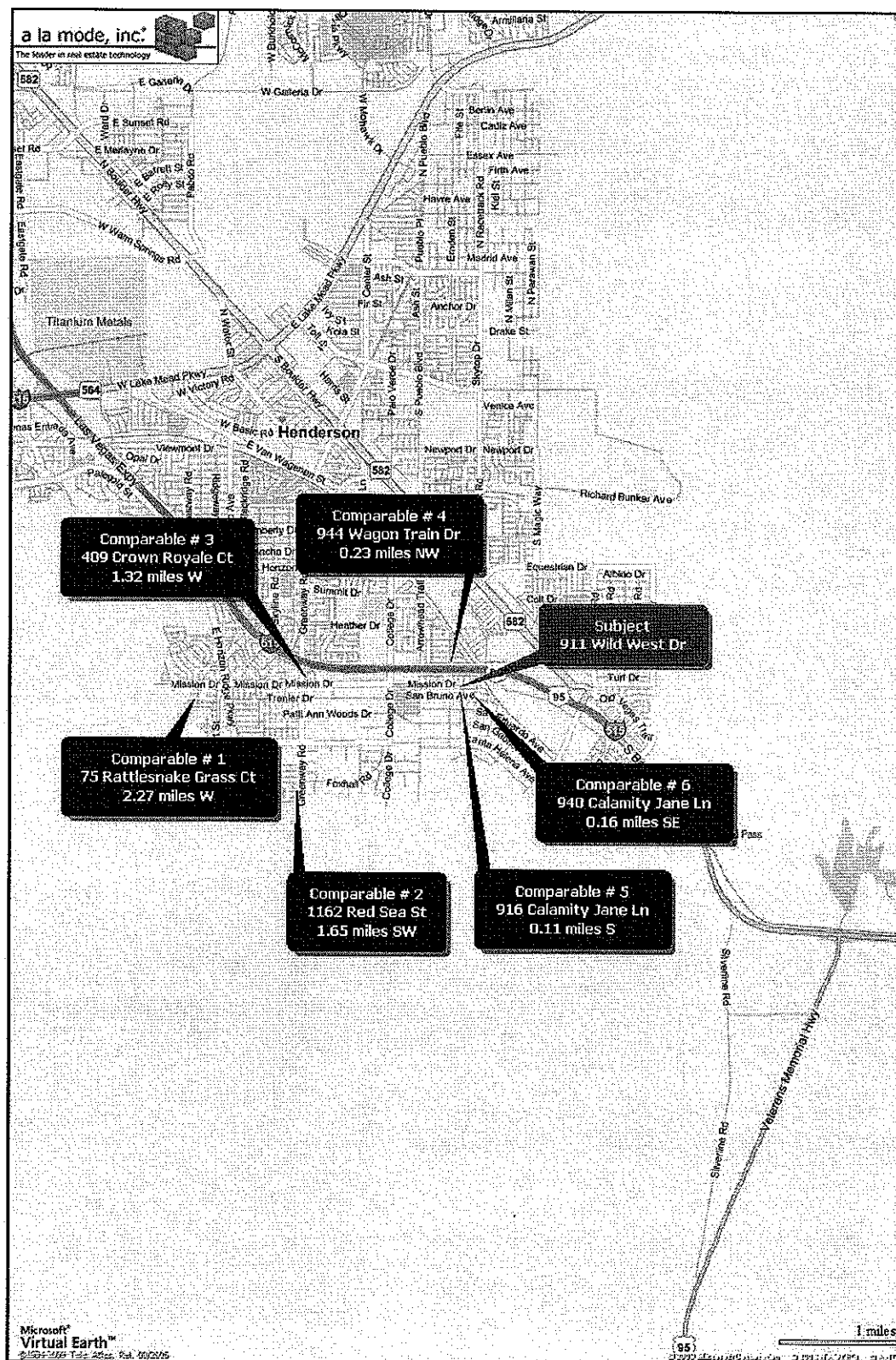
Uniform Residential Appraisal Report

File # 0082448

FEATURE	SUBJECT	COMPARABLE SALE #4	COMPARABLE SALE #5	COMPARABLE SALE #6
Address	911 Wild West Dr Henderson, NV 89002-9424	944 Wagon Train Dr Henderson	916 Calamity Jane Ln Henderson	940 Calamity Jane Ln Henderson
Proximity to Subject		0.23 miles NW	0.11 miles S	0.16 miles SE
Sale Price	\$ N/A	\$ 210,000	\$ 269,500	\$ 299,900
Sale Price/Gross Liv. Area	\$ sq.ft.	\$ 100.29 sq.ft.	\$ 130.63 sq.ft.	\$ 126.01 sq.ft.
Data Source(s)		Taxstar & MLS # 864209	Taxstar & MLS # 855045	Taxstar & MLS # 781950
Verification Source(s)		APN # 179-28-416-005	APN # 179-33-113-028	APN # 179-33-513-024
VALUE ADJUSTMENTS	DESCRIPTION	DESCRIPTION +(-) \$ Adjustment	DESCRIPTION +(-) \$ Adjustment	DESCRIPTION +(-) \$ Adjustment
Sales or Financing Concessions	FHA Dom 45		Current Listing Dom 166	Current Listing Dom 419
Date of Sale/Time	12/03/2008		Listed 08/16/08	Listed 12/05/07
Location	Suburban		Suburban	Suburban
Leasehold/Fee Simple	Fee Simple		Fee Simple	Fee Simple
Site	10,107 Sq. Ft.	6,929 Sq. Ft. +3,000	7,632 Sq. Ft. +2,500	7,668 Sq. Ft. +2,500
View	Neighborhood		Neighborhood	Neighborhood
Design (Style)	1 Story		1 Story	1 Story
Quality of Construction	Stucco / Conc		Stucco / Conc	Stucco / Conc
Actual Age	14 Years		13 Years	12 Years
Condition	Average		Average	Average
Above Grade	Total Bdrms. Baths	Total Bdrms. Baths	Total Bdrms. Baths	Total Bdrms. Baths
Room Count	6 4 2.50	8 4 2.00 +1,500	5 3 2.00 +1,500	7 3 2.50 0
Gross Living Area	2,426 sq.ft.	2,094 sq.ft. +13,280	2,063 sq.ft. +14,520	2,380 sq.ft. 0
Basement & Finished Rooms Below Grade	0 0	0 0	0 0	0 0
Functional Utility	Average	Average	Average	Average
Heating/Cooling	FWA / CAC	FWA / CAC	FWA / CAC	FWA / CAC
Energy Efficient Items	None Noted	None Noted	None Noted	None Noted
Garage/Carport	Garage 3	Garage 3 0	Garage 3 0	Garage 3 0
Porch/Patio/Deck	Cov Patio	Patio +1,500	Cov Patio 0	Patio +1,500
Fireplace	Fireplace 1	Fireplace 1 0	Fireplace 1 0	Fireplace 1 0
Upgrades / Landscaping	Avg / Avg	Avg - / Avg +3,000	Avg - / Avg +2,500	Avg / Avg
Pool / Spa	No Pool/No Spa	No Pool/No Spa 0	No Pool/No Spa 0	Pool / Spa -20,000
Net Adjustment (Total)		\$ 22,280	\$ 21,020	\$ -16,000
Adjusted Sale Price of Comparables		Net Adj. 10.6 % Gross Adj. 10.6 % \$ 232,280	Net Adj. 7.8 % Gross Adj. 7.8 % \$ 290,520	Net Adj. 5.3 % Gross Adj. 8.0 % \$ 283,900
Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).				
ITEM	SUBJECT	COMPARABLE SALE #4	COMPARABLE SALE #5	COMPARABLE SALE #6
Date of Prior Sale/Transfer	02/07/2006	None Noted / 3 Years	None Noted / 3 Years	None Noted / 3 Years
Price of Prior Sale/Transfer	\$485,000	None Noted / 3 Years	None Noted / 3 Years	None Noted / 3 Years
Data Source(s)	Clark County Assessor,MLS	Clark County Assessor,MLS	Clark County Assessor,MLS	Clark County Assessor,MLS
Effective Date of Data Source(s)	01/24/2009	01/24/2009	01/24/2009	01/24/2009
Analysis of prior sale or transfer history of the subject property and comparable sales The subject and comparable sales have not been sold within the last 3 years except as given in the grid of the sales comparison approach.				
Analysis/Comments				

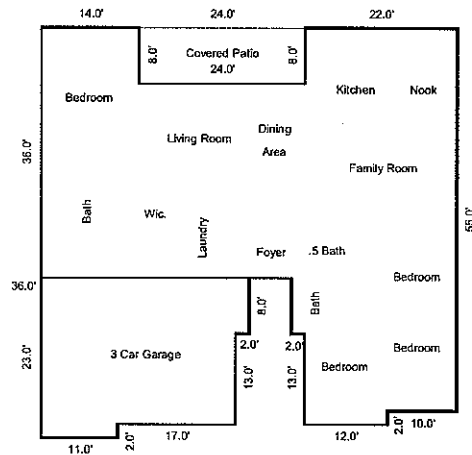
Location Map

Borrower/Client	N/A				
Property Address	911 Wild West Dr				
City	Henderson	County	Clark	State	NV
Zip Code	89002-9424				
Lender	Boris, John C				



Building Sketch

Borrower/Client	N/A			
Property Address	911 Wild West Dr			
City	Henderson	County	Clark	State NV Zip Code 89002-9424
Lender	Boris, John C			



Sketch by Apex N™

Comments:

AREA CALCULATIONS SUMMARY			
Code	Description	Net Size	Net Totals
GLA1	First Floor	2426.0	2426.0
P/P	Covered Patio	192.0	192.0
GAR	Garage	626.0	626.0
Net LIVABLE Area		(Rounded)	2426

LIVING AREA BREAKDOWN			
Breakdown			Subtotals
First Floor			
22.0	x	55.0	1210.0
2.0	x	12.0	24.0
14.0	x	36.0	504.0
24.0	x	28.0	672.0
2.0	x	8.0	16.0
5 Items			(Rounded) 2426

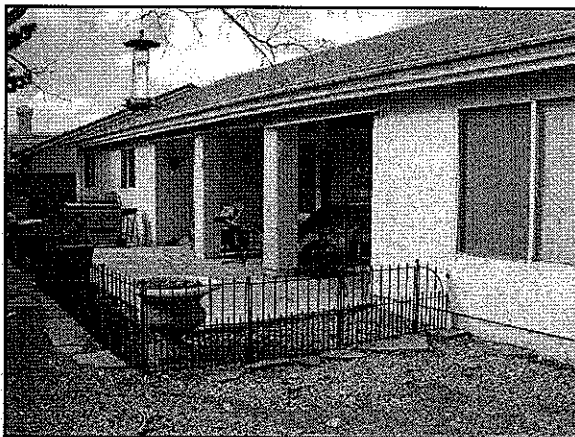
Subject Photo Page

Borrower/Client	N/A			
Property Address	911 Wild West Dr			
City	Henderson	County	Clark	State NV Zip Code 89002-9424
Lender	Boris, John C			

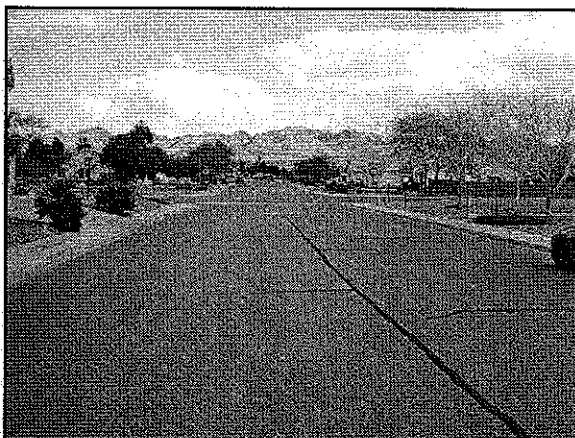


Subject Front

911 Wild West Dr
 Sales Price N/A
 Gross Living Area 2,426
 Total Rooms 6
 Total Bedrooms 4
 Total Bathrooms 2.50
 Location Suburban
 View Neighborhood
 Site 10,107 Sq. Ft.
 Quality Stucco / Conc
 Age 14 Years



Subject Rear



Subject Street

Subject Interior Photo Page

Borrower/Client	N/A				
Property Address	911 Wild West Dr				
City	Henderson	County	Clark	State	NV
				Zip Code	89002-9424
Lender	Boris, John C				



Subject Interior

911 Wild West Dr
 Sales Price N/A
 Gross Living Area 2,426
 Total Rooms 6
 Total Bedrooms 4
 Total Bathrooms 2.50
 Location Suburban
 View Neighborhood
 Site 10,107 Sq. Ft.
 Quality Stucco / Conc
 Age 14 Years



Subject Interior



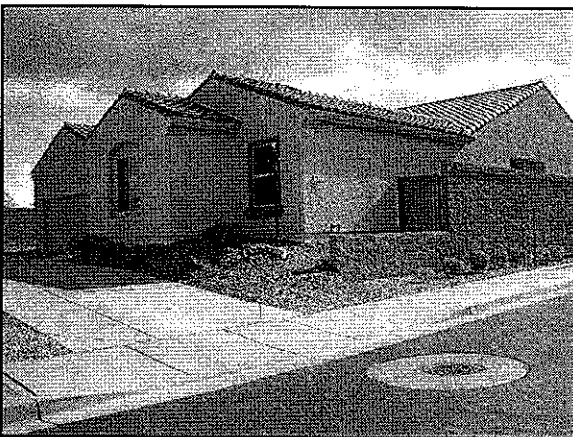
Subject Interior

Comparable Photo Page

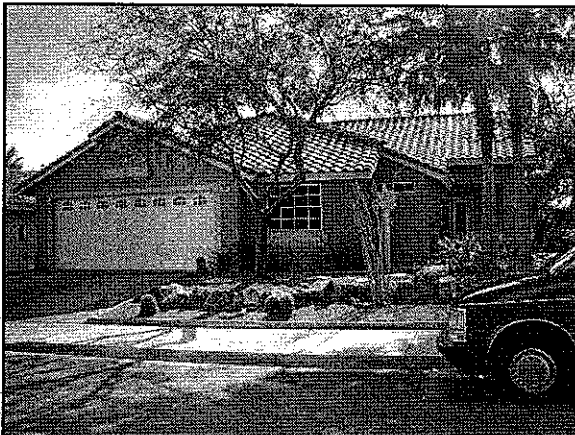
Borrower/Client	N/A				
Property Address	911 Wild West Dr				
City	Henderson	County	Clark	State	NV Zip Code 89002-9424
Lender	Boris, John C				

**Comparable 1**

75 Rattlesnake Grass Ct
 Prox. to Subject 2.27 miles W
 Sales Price 287,000
 Gross Living Area 2,346
 Total Rooms 7
 Total Bedrooms 4
 Total Bathrooms 3.00
 Location Suburban
 View Neighborhood
 Site 6,970 Sq. Ft.
 Quality Stucco / Conc
 Age 4 Years

**Comparable 2**

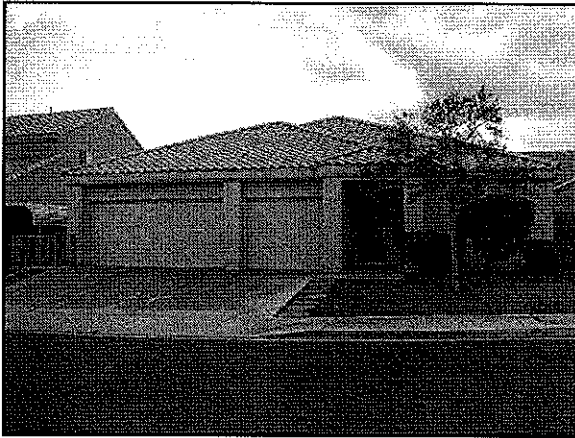
1162 Red Sea St
 Prox. to Subject 1.65 miles SW
 Sales Price 240,000
 Gross Living Area 2,693
 Total Rooms 6
 Total Bedrooms 3
 Total Bathrooms 2.50
 Location Suburban
 View Neighborhood
 Site 9,148 Sq. Ft.
 Quality Stucco / Conc
 Age 3 Years

**Comparable 3**

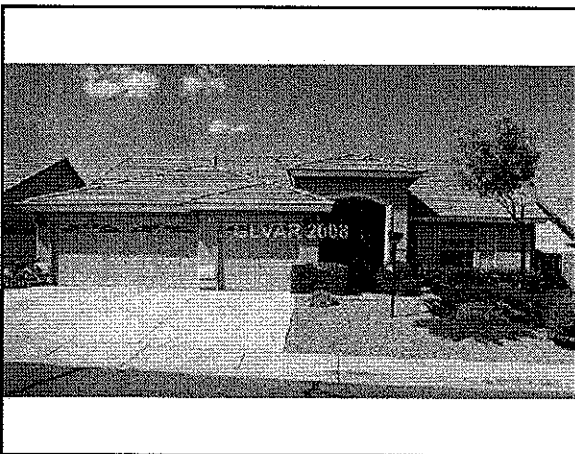
409 Crown Royale Ct
 Prox. to Subject 1.32 miles W
 Sales Price 255,000
 Gross Living Area 2,018
 Total Rooms 7
 Total Bedrooms 4
 Total Bathrooms 3.00
 Location Suburban
 View Neighborhood
 Site 5,995 Sq. Ft.
 Quality Stucco / Conc
 Age 13 Years

Comparable Photo Page

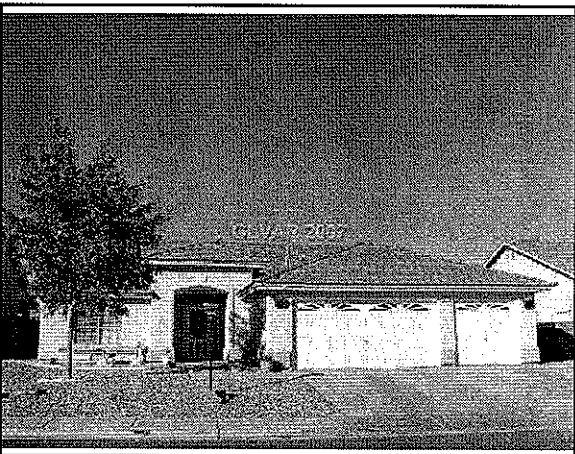
Borrower/Client	N/A				
Property Address	911 Wild West Dr				
City	Henderson	County	Clark	State	NV
Lender	Boris, John C	Zip Code	89002-9424		

**Comparable 4**

944 Wagon Train Dr
 Prox. to Subject 0.23 miles NW
 Sales Price 210,000
 Gross Living Area 2,094
 Total Rooms 8
 Total Bedrooms 4
 Total Bathrooms 2.00
 Location Suburban
 View Neighborhood
 Site 6,929 Sq. Ft.
 Quality Stucco / Conc
 Age 10 Years

**Comparable 5**

916 Calamity Jane Ln
 Prox. to Subject 0.11 miles S
 Sales Price 269,500
 Gross Living Area 2,063
 Total Rooms 5
 Total Bedrooms 3
 Total Bathrooms 2.00
 Location Suburban
 View Neighborhood
 Site 7,632 Sq. Ft.
 Quality Stucco / Conc
 Age 13 Years

**Comparable 6**

940 Calamity Jane Ln
 Prox. to Subject 0.16 miles SE
 Sales Price 299,900
 Gross Living Area 2,380
 Total Rooms 7
 Total Bedrooms 3
 Total Bathrooms 2.50
 Location Suburban
 View Neighborhood
 Site 7,668 Sq. Ft.
 Quality Stucco / Conc
 Age 12 Years

APPRAISER LICENSE		
STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY		
NOT TRANSFERABLE	REAL ESTATE DIVISION	NOT TRANSFERABLE
This is to Certify That: STEVEN D PROTHEROE		License Number: A.0004621-RES
Is duly authorized to act as a LICENSED RESIDENTIAL APPRAISER from the issue date to the expiration date the business address stated herein, unless the license is sooner revoked, cancelled, withdrawn, or invalidated.		
Issue Date: April 19, 2007		Expire Date: April 30, 2009
In witness whereof, THE DEPARTMENT OF BUSINESS AND INDUSTRY, REAL ESTATE DIVISION, by virtue of the authority vested in it by Chapter 645C of the Nevada Revised Statutes, has caused this license to be issued with its Seal printed thereon. This license must be conspicuously displayed in place of business.		
FOR: DESERT APPRAISALS LLC 6295 MCLEOD DR #18 LAS VEGAS, NV 89120		REAL ESTATE DIVISION GAIL L ANDERSON Administrator
		